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ORIGINAL
FILED

OCT 19 2007

RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
PROCLAMATION

5 Attorneys for Plaintiffs
6 JANA OVERBO and
7 NICOLE BROWN-BOOKER

E-filing

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 C07-05368 WDB

12 JANA OVERBO and
13 NICOLE BROWN-BOOKER,

14 Plaintiff,

15 v.

16
17 LOEWS CALIFORNIA
18 THEATRES, INC. dba AMC
19 LOEWS METREON 16 IMAX;
WESTFIELD CORPORATION;
and DOES 1-10, Inclusive,

20 Defendants.

CASE NO.
Civil Rights

21
22 COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF AND DAMAGES: DENIAL
OF CIVIL RIGHTS AND ACCESS TO
PUBLIC FACILITIES TO
PHYSICALLY DISABLED PERSONS,
AND PER CALIFORNIA STATUTES
(INCLUDING CIVIL CODE §§ 51, 52,
54, 54.1, 54.3, AND §55; and HEALTH
& SAFETY CODE §§19955, *et seq.*);
INJUNCTIVE RELIEF PER TITLE III,
AMERICANS WITH DISABILITIES
ACT OF 1990

23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs JANA OVERBO and NICOLE BROWN-BOOKER
complain of defendants LOEWS CALIFORNIA THEATRES, INC. dba AMC
LOEWS METREON 16 IMAX; WESTFIELD CORPORATION; and DOES 1-
10, Inclusive, and each of them, and alleges as follows:

25
26 1. **INTRODUCTION:** This case involves the denial of accessible
facilities, to plaintiffs and other disabled persons, at the AMC Loews Metreon 16
27 IMAX at 101 4th Street in San Francisco, California 94103. Plaintiffs JANA
28

1 OVERBO and NICOLE BROWN-BOOKER are each a “person with a disability”
 2 or “physically handicapped person,” who requires the use of a motorized
 3 wheelchair for mobility, and is unable to use portions of public facilities which
 4 are not accessible to physically disabled persons who use a wheelchair. Plaintiffs
 5 were denied their rights to full and equal access at these facilities, and were
 6 denied their civil rights under both California law and federal law, as hereinbelow
 7 described, because these facilities were not, and are not now, properly accessible
 8 to physically disabled persons, such as plaintiffs, including those who use
 9 wheelchairs, walkers, crutches, or other assistive devices. Plaintiffs seek
 10 injunctive relief to require defendants to make these facilities accessible to
 11 disabled persons and to ensure that any disabled person who attempts to use the
 12 facilities will be provided accessible entry and accessible paths of travel,
 13 accessible seating, and other access as described herein. Plaintiffs also seek
 14 recovery of damages for their discriminatory experiences, and denial of access
 15 and denial of their civil rights, which denial is continuing as a result of
 16 defendants’ failure and refusal to provide disabled accessible facilities. Plaintiffs
 17 also seek recovery of reasonable attorney fees, litigation expenses and costs,
 18 according to statute.

19 2. **JURISDICTION:** This Court has jurisdiction of this action
 20 pursuant to 28 USC §1331 for violations of the Americans with Disabilities Act
 21 of 1990, 42 USC 12101, *et seq.* Pursuant to supplemental jurisdiction, attendant
 22 and related causes of action arising from the same facts are also brought under
 23 California law, including but not limited to violations of California Government
 24 Code §4450, *et. seq.*; California Health & Safety Code §19955, *et seq.*, including
 25 §19959; Title 24 California Code of Regulations; and California Civil Code §§
 26 51, 52, 54, 54.1 and 55.

27 3. **VENUE:** Venue is proper in this Court pursuant to 28 USC 1391(b)
 28 and is founded on the fact that the real property which is the subject of this action

1 is located in this district and that plaintiffs' causes of action arose in this district.

2 4. **INTRADISTRICT:** This case should be assigned to the San
 3 Francisco/Oakland intradistrict as the real property which is the subject of this
 4 action is located in this intradistrict and plaintiffs' causes of action arose in this
 5 intradistrict.

6 5. **PARTIES:** Plaintiffs are both "qualified" physically disabled
 7 persons for purposes of all federal and state statutory protections. Defendants
 8 LOEWS CALIFORNIA THEATRES, INC. dba AMC LOEWS METREON 16
 9 IMAX; WESTFIELD CORPORATION; and DOES 1-10, Inclusive, are the
 10 owners, operators, lessors, and lessees of the AMC Loews Metreon 16 IMAX at
 11 101 4th Street in San Francisco, California. Defendants are responsible for
 12 owning, operating, leasing, and maintaining all areas of the subject premises, each
 13 of which constitute public facilities and public accommodations. Each of the
 14 subject areas, premises, and facilities complained of herein is owned and/or leased
 15 and operated by the named defendants and is a "public facility" and "public
 16 accommodation" subject to the requirements of Title III of the Americans With
 17 Disabilities Act of 1990 and of California Health & Safety Code §§ 19955, *et seq.*
 18 and of California Civil Code §§ 51, 52, 54, 54.1 *et seq.* Such facilities have, since
 19 July 1, 1970, undergone construction and/or "alterations, structural repairs, or
 20 additions" subjecting such building and/or facility to disabled access requirements
 21 per Health & Safety Code §§ 19955-19959, *et seq.* Such construction and
 22 alterations have also occurred since July 1, 1982, and also subject each such
 23 building and/or facility to requirements of California's Title 24, the State Building
 24 Code. Further, irrespective of the construction and alteration history, all such
 25 premises and facilities are subject to the "readily achievable" barrier removal
 26 requirements of Title III of the Americans With Disabilities Act of 1990
 27 (hereinafter "ADA"), per 42 U.S.C. 12181*ff*, and, as to construction and/or
 28 alteration since 1993, subject also to § 303 of the ADA [42 USC 12183].

1 6. The true names and capacities of Defendants DOES 1-10, Inclusive,
 2 are unknown to plaintiff who therefore sues said defendants by such fictitious
 3 names. Plaintiffs are informed and believe that each of the defendants herein
 4 designated as a Doe is legally responsible in some manner for the events and
 5 happenings herein referred to and caused injury and damages proximately thereby
 6 to plaintiffs; plaintiffs pray leave of Court to amend this Complaint to show such
 7 true names and capacities when the same have been ascertained.

8 7. Defendants LOEWS CALIFORNIA THEATRES, INC. dba AMC
 9 LOEWS METREON 16 IMAX; WESTFIELD CORPORATION; and DOES 1-
 10 10, Inclusive, are and were the owners, operators, lessors and/or lessees of the
 11 subject business, premises, facilities and property at times relevant to this
 12 Complaint. Plaintiffs are informed and believe that each of the defendants herein
 13 is the agent, employee or representative of each of the other defendants, and
 14 performed all acts and omissions stated herein within the scope of such agency or
 15 employment or representative capacity and is responsible in some manner for the
 16 acts and omissions of the other defendants in proximately causing the damages
 17 complained of herein.

18

19 **FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF**
 20 **FOR DENIAL OF FULL AND EQUAL ACCESS TO A PUBLIC**
 21 **ACCOMMODATION: PUBLIC FACILITIES IN A PUBLIC FACILITY**
 22 **(California Health & Safety Code §§ 19955, et Seq., Civil Code §§ 54ff)**

23 8. Plaintiffs replead and incorporate by reference, as if fully set forth
 24 again herein, the factual allegations contained in Paragraphs 1 through 7, above,
 25 and incorporate them herein by reference as if separately repled hereafter.

26 9. Plaintiffs JANA OVERBO and NICOLE BROWN-BOOKER and
 27 other similarly situated physically disabled persons, including those who require
 28 the use of a wheelchair, walker, crutches, cane or other assistive device, are
 unable to use public facilities on a "full and equal" basis unless each such facility

1 is in compliance with the provisions of California Health & Safety Code §§
 2 19955, *et seq.* Plaintiff is a member of that portion of the public whose rights are
 3 protected by the provisions of Health & Safety Code §§ 19955, *et seq.*

4 10. Health & Safety Code §§ 19955 and 19955.5 were enacted “To
 5 ensure that public accommodations or facilities constructed in this state with
 6 private funds adhere to the provisions of Chapter 7 (commencing with Section
 7 4450) of Division 5 of Title 1 of the Government Code.” On information and
 8 belief the provisions of both Health and Safety Code §§ 19955 and 19955.5,
 9 apply to the multiple public facilities and public accommodations which are
 10 located within the property owned and operated by defendants. Title 24,
 11 California Code of Regulations, formerly known as the California Administrative
 12 Code, was in effect at the time of each construction and/or alteration which
 13 occurred at such public facility since July 1, 1982, thus requiring access
 14 complying with the specifications of Title 24 whenever each such “alteration,
 15 structural repair or addition” was carried out. On information and belief,
 16 defendants and/or their predecessors in interest carried out construction and/or
 17 alterations, structural repairs, or additions to the subject premises, facilities, and
 18 buildings during the period Title 24 has been in effect.

19 11. **FACTUAL STATEMENT:** On or about the first week of January,
 20 2006, plaintiff Nicole Brown-Booker, in her motorized wheelchair, went to the
 21 AMC Loews Metreon 16 IMAX theater complex to see “Memoirs of a Geisha”
 22 with her companion, Darcy Ing. Her friend had already purchased a ticket, but
 23 plaintiff Brown-Booker had not. The staff refused to sell her a ticket because the
 24 show was “sold out.” She asked the clerk to check and see if the designated
 25 wheelchair seating was occupied, because, regardless of whether fixed seating
 26 was sold out, she would sit in the designated area for wheelchairs. Although
 27 plaintiff was initially told that the designated wheelchair area was empty,
 28 defendants refused to sell her a ticket. When plaintiff protested, she was sent to

1 speak to a manager on the second floor. When plaintiff entered the elevator, she
 2 discovered that she was unable to push the buttons on the elevator because they
 3 were out of her reach. However, plaintiff was assisted in using the elevator by her
 4 able-bodied companion. When she reached the second floor the manager agreed
 5 to sell her a ticket, but required that plaintiff go back downstairs to purchase the
 6 ticket, and then come back up to the theater, and, as a result plaintiff ended up
 7 missing the first five minutes of the movie. Because there were no designated
 8 companion seats available, and a portable seat for her companion was not offered
 9 by defendants, plaintiff was not able to sit near her friend.

10 12. On or about July 1, 2006, plaintiff Nicole Brown-Booker went to the
 11 AMC Loews Metreon 16 IMAX with her friend, co-plaintiff Jana Overbo, to see a
 12 movie. The only "wheelchair" seating area offered was in the very front and
 13 toward the side of the theater, which made it hard for the two women to see the
 14 screen. They had to tilt their chairs back and crane their necks to view the screen,
 15 and as a result suffered pain and discomfort, including stiff necks. They also
 16 found that sitting in this location, so close to the screen, made them feel dizzy. In
 17 addition, the designated "accessible" seating was improperly too narrow for two
 18 wheelchair users to comfortably sit side-by-side. (On information and belief, this
 19 lack of sufficient space for proper and legally required numbers of accessible
 20 seating areas in existent numerous other seating areas of the theaters.) Later,
 21 plaintiff Brown-Booker tried to wash her hands in the restroom but she could not
 22 reach the sink because she could not fit her wheelchair underneath the sink. She
 23 was also unable to reach the paper towel dispenser because a garbage can blocked
 24 the dispenser, and the dispenser was mounted too high for disabled use. She had
 25 to ask another customer to dampen a paper towel for her so that she could wipe
 26 her hands. On information and belief, this and the other public restrooms in the
 27 theater complex lack other fully compliant disability access features.

28 13. On or about the last week of December, 2006, Nicole Brown-Booker

1 wanted to invite a friend to the movies, but she was deterred from doing so
 2 because of her prior experience of access problems at the Metreon. Plaintiff
 3 Brown-Booker has been personally deterred from going to the Metreon and has
 4 been deterred from bringing friends to the AMC Loews Metreon 16 with IMAX
 5 on this and other occasions because of her fear that she would be embarrassed to
 6 be denied access to the facilities there because of the limited wheelchair and
 7 companion seating, and to have that happen in front of friends who might
 8 accompany her.

9 14. On or about January, 2007 Nicole Brown-Booker took her eight-
 10 year-old nephew, Shawn Stewart, to see "Happy Feet." When she went up to the
 11 counter to purchase the tickets, she had to ask her nephew for help because the
 12 woman selling the tickets could not reach plaintiff Brown-Booker or other
 13 wheelchair users over the high counter. Although plaintiff Brown-Booker saw a
 14 nearby lowered section of the counter, it appeared to be used for storage and was
 15 blocked by boxes. Once inside the theater, plaintiff Brown-Booker visited the
 16 refreshments stand with her nephew and bought a popcorn, large soda, and candy
 17 for them to share. However, plaintiff was unable to physically reach the
 18 refreshments she had purchased because they were placed on a high counter and
 19 the clerk did not provide service on the lowered portion of the counter. When
 20 plaintiff Brown-Booker and her nephew finally entered the theater, they found
 21 that the only wheelchair accessible theater seating was at the very front of the
 22 theater. Because plaintiff's eight year old nephew said he could not see if he had
 23 to sit so close to the screen, he ended up sitting four rows behind plaintiff.
 24 Plaintiff Brown-Booker, responsible for her nephew's care, was upset that she
 25 could not sit with her nephew; because she was worried about him sitting alone,
 26 plaintiff kept looking back to check on him throughout the movie. She was also
 27 upset that she was unable to share the popcorn and soda with him during the
 28 movie.

1 15. On or about May 12, 2007, plaintiffs Nicole Brown-Booker and Jana
 2 Overbo went to the AMC Loews Metreon 16 IMAX together to see a movie. They
 3 went to the concessions stand to order refreshments. Part of the concessions stand
 4 is equipped with a lowered counter, but the employee did not use it to assist
 5 plaintiff Brown-Booker, even though the lowered area was open. On information
 6 and belief, this was because defendants did not properly train their employees in
 7 proper service practices to accommodate the needs of physically disabled persons.
 8 Once plaintiff Brown-Booker had placed her order, she asked the concessions
 9 clerk to come out from behind the counter to hand her the food, because plaintiff
 10 could not reach the food on the high counter. She asked three times but the clerk
 11 refused. Finally another customer took the food from the clerk and handed it to
 12 plaintiff Brown-Booker.

13 16. On information and belief, and based on a preliminary investigation
 14 by plaintiffs' representatives, the physical property owned and operated by
 15 defendants and each of them was also constructed and maintained in an
 16 inaccessible condition for use by physically disabled persons with regard to a
 17 number of features which may adversely affect plaintiffs, both wheelchair users,
 18 whenever they may attempt to patronize the Metreon and its multiple theaters in
 19 the future, including but not limited to the lack of properly located and accessible
 20 seating in each of the theaters, including the IMAX theater, inaccessible
 21 concessions stands, and inaccessible public restroom facilities. Defendants also
 22 have an obligation to provide accessible seating and companion seating in a
 23 variety of locations, and to train their staff with regard to proper policies and
 24 procedures in accommodating physically disabled persons.

25 17. While there is *possible* disabled seating in the rear of certain theaters,
 26 most or all of these seating areas can only be entered through an "exit" door with
 27 no exterior handles or signs allowing public entry. Further, a planned system of
 28 policy changes, placement of informational signs, training of staff, signage

1 designating areas for wheelchair seating with available movable chairs for
 2 companion seating, and arrangements for defendants' staff to promptly assist
 3 disabled wheelchair users in entry and location of seats in each theater, would be
 4 needed to make these areas usable by disabled persons who cannot climb stairs.
 5 There is currently no accessible route in each theater to reach these upper level
 6 seating areas for persons who enter through the public entrances, at the front row
 7 level. Further, while there are certain areas in certain theaters that could be used
 8 by disabled wheelchair users, even those areas are not marked or designated for
 9 wheelchair use, nor do they have available moveable chairs for companion
 10 seating. Also, certain theaters may apparently have top row seating accessed by
 11 mechanical lifts, but these lifts are not properly signed, not independently
 12 operable, and, on information and belief, disabled usage of these lifts is not
 13 properly facilitated by policies for signage, notice, and programmatic assistance.
 14 On information and belief, all or nearly all theaters lack properly located disabled
 15 seating and most theaters also lack the required number of wheelchair user and
 16 companion seats, per California Title 24 and federal ADAAG requirements.

17 18. These public facilities are all inaccessible to persons with
 disabilities, and will continue to be inaccessible in the future unless changed and
 improved in multiple aspects, all rendering these premises inaccessible to and
 unuseable by physically disabled persons. All areas complained of are common
 public facilities open to use by all members of the public. All facilities must be
 brought into compliance with all applicable federal and state code requirements.

23 19. Further, each and every violation of the Americans With Disabilities
 24 Act of 1990 (as pled in the Third Cause of Action hereinbelow, the contents of
 25 which are replied and incorporated herein, word for word, as if separately replied),
 26 also constitutes a separate and distinct violation of California Civil Code §54(c),
 27 thus independently justifying an award of damages and injunctive relief pursuant
 28 to California law, including but not limited to Civil Code §§ 54.3 and 55.

1 20. Further, each and every violation of the Americans With Disabilities
 2 Act of 1990 (as pled in the Third Cause of Action hereinbelow, the contents of
 3 which are replied and incorporated herein, word for word, as if separately replied),
 4 also constitutes a separate and distinct violation of California Civil Code
 5 §54.1(d), thus independently justifying an award of damages and injunctive relief
 6 pursuant to California law, including but not limited to Civil Code §§ 54.3 and
 7 55.

8 **21. INJUNCTIVE RELIEF:** Plaintiffs seek injunctive relief to prohibit
 9 the acts and omissions of defendants as complained of herein which are
 10 continuing on a day-to-day basis and which have the effect of wrongfully
 11 excluding plaintiffs and other members of the public who are physically disabled,
 12 including those who use wheelchairs, walkers, canes, prosthetic devices or
 13 crutches, from full and equal access to these public facilities. Such acts and
 14 omissions are the cause of humiliation and mental and emotional suffering of
 15 plaintiffs in that these actions continue to treat plaintiffs as inferior and second
 16 class citizens and serve to discriminate against them on the sole basis that they are
 17 each a person with a disability who requires the use of a wheelchair for movement
 18 in public places. Plaintiffs are unable, so long as such acts and omissions of
 19 defendants continue, to achieve full and equal access to and use of these public
 20 facilities, and are deterred from using these facilities until they are made properly
 21 accessible to disabled persons. Plaintiffs allege that they intend, once legally
 22 required access has been provided, to return to and make use of these facilities.
 23 The acts of defendants have proximately caused and will continue to cause
 24 irreparable injury to plaintiffs if not enjoined by this Court.

25 22. Wherefore plaintiffs ask this Court to preliminarily and permanently
 26 enjoin any continuing refusal by defendants to grant full and equal access to
 27 plaintiffs in the respects complained of and to require defendants to comply
 28 forthwith with the applicable statutory requirements relating to access for disabled

1 persons. Such injunctive relief is provided by California Health & Safety Code
 2 §19953 and California Civil Code §55, and other law. Plaintiffs further request
 3 that the Court award damages pursuant to Civil Code §54.3 and other law and
 4 attorney fees, litigation expenses, and costs pursuant to Health & Safety Code
 5 §19953, Civil Code §§ 54.3 and 55, Code of Civil Procedure §1021.5 and other
 6 law, all as hereinafter prayed for.

7 **23. DAMAGES:** As a result of the denial of equal access to these
 8 facilities and due to the acts and omissions of defendants and each of them in
 9 owning, operating, leasing, constructing, altering, and maintaining the subject
 10 facility, plaintiffs suffered violation of their civil rights, including but not limited
 11 to rights under Civil Code §§ 54 and 54.1, and physical, mental and emotional
 12 injuries, all to their damages per Civil Code §54.3, including statutory treble
 13 damages, as hereinafter stated. Defendants' actions and omissions to act
 14 constitute discrimination against plaintiffs on the sole basis that each plaintiff is
 15 physically disabled and unable, because of the architectural barriers created
 16 and/or maintained by the defendants in violation of the subject laws, to use these
 17 public facilities on a full and equal basis as other persons. On information and
 18 belief, plaintiffs have been denied access on a continuing and day-to-day basis
 19 since January, 2006, and will continue to be denied access until proper access is
 20 provided.

21 **24. TREBLE DAMAGES :** All of those defendants who owned and/or
 22 operated the facilities as of the date of plaintiffs' visits, including but not limited
 23 to on or about January 2006, July 2006, December 2006, January 2007, and May
 24 12, 2007, and at all times since those dates, have knowingly continued to maintain
 25 inaccessible premises despite actual and implied knowledge that their premises
 26 were illegally inaccessible. Such defendants are responsible for treble damages
 27 per California Civil Code § 54.3, three times "actual" damages, including general
 28 damages and damages for physical, mental and emotional injuries, because they

1 continued to deny access for an extended period of time despite actual or implied
 2 knowledge that they were denying access to physically disabled persons.

3 **25. FEES AND COSTS:** As a result of defendants' acts, omissions, and
 4 conduct, plaintiffs have been required to incur attorney fees, litigation expenses,
 5 and costs as provided by statute, in order to enforce plaintiffs' rights and to
 6 enforce provisions of the law protecting access for disabled persons and
 7 prohibiting discrimination against disabled persons. Plaintiffs therefore seek
 8 recovery of all reasonable attorney fees, litigation expenses, and costs, pursuant to
 9 the provisions of California Civil Code §§ 54.3 and 55, and California Health &
 10 Safety Code §19953 *ff.* Additionally, plaintiffs' lawsuit is intended to require that
 11 defendants make their facilities accessible to all disabled members of the public,
 12 justifying "public interest" attorney fees, litigation expenses and costs pursuant to
 13 the provisions of California Code of Civil Procedure §1021.5 and other applicable
 14 law.

15 Wherefore plaintiffs pray for relief as hereinafter stated.
 16

17 **SECOND CAUSE OF ACTION:
 18 VIOLATION OF UNRUH CIVIL RIGHTS ACT
 19 CALIFORNIA CIVIL CODE SECTIONS 51 AND 52,
 20 ON THE BASIS OF DISABILITY**

21 26. Plaintiffs replead and incorporate by reference, as if fully set forth
 22 again herein, the factual allegations contained in Paragraphs 1 through 25, above,
 23 and incorporate them herein by reference as if separately replied hereafter.

24 27. At all times herein mentioned, the Unruh Civil Rights Act, California
 25 Civil Code §51(b), provided that:

26 All persons within the jurisdiction of this state are free and equal,
 27 and no matter what their sex, race, color, religion, ancestry, national
 28 origin, disability, or medical condition are entitled to the full and
 equal accommodations, advantages, facilities, privileges, or services
 in all business establishments of every kind whatsoever.

29 Per §51(f),

A violation of the right of any individual under the Americans With Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

3 28. Plaintiffs suffered damages as above described as a result of
4 defendants' violation of California Civil Code §§ 51(b) and 51(f) in multiple
5 regards, including but not limited to violations of the ADA, as described in the
6 Third Cause of Action, *infra*, the contents of which cause of action is
7 incorporated herein as if separately replied. California Civil Code §52(a) provides
8 that each such violation entitles plaintiffs to "the actual damages, and any amount
9 that may be determined by a jury, or a court sitting without a jury, up to a
10 maximum of three times the amount of actual damage but in no case less than four
11 thousand dollars (\$4,000), and any attorney fees that may be determined by the
12 court in addition thereto..."

13 WHEREFORE, plaintiffs pray for damages and injunctive relief as
14 hereinafter stated.

**THIRD CAUSE OF ACTION:
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990
42 USC §12101FF**

18 29. Plaintiffs replead and incorporates by reference, as if fully set forth
19 again herein, the allegations contained in Paragraphs 1 through 28 of this
20 Complaint, and incorporate them herein as if separately replied.

21 30. Pursuant to law, in 1990 the United States Congress made findings
22 per 42 USC §12101 regarding physically disabled persons, finding that laws were
23 needed to more fully protect “some 43,000,000 Americans [with] one or more
24 physical or mental disabilities;” that “historically, society has tended to isolate
25 and segregate individuals with disabilities;” that “such forms of discrimination
26 against individuals with disabilities continue to be a serious and pervasive social
27 problem;” that “the Nation’s proper goals regarding individuals with disabilities
28 are to assure equality of opportunity, full participation, independent living, and

1 economic self-sufficiency for such individuals;" and that "the continuing
 2 existence of unfair and unnecessary discrimination and prejudice denies people
 3 with disabilities the opportunity to compete on an equal basis and to pursue those
 4 opportunities for which our free society is justifiably famous..." Presidential
 5 proclamation since then have placed the number of disabled persons protected by
 6 the ADA at more than 50 million persons. Yet many large public
 7 accommodations are still illegally inaccessible to physically disabled persons
 8 despite the passage of more than 17 years under the ADA.

9 31. Congress stated as its purpose in passing the Americans with
 10 Disabilities Act (42 USC §12101(b))

11 It is the purpose of this Act

- 12 (1) to provide a clear and comprehensive national mandate for the
 elimination of discrimination against individuals with disabilities;
- 13 (2) to provide clear, strong, consistent, enforceable standards addressing
 discrimination against individuals with disabilities;
- 15 (3) to ensure that the Federal Government plays a central role in enforcing
 the standards established in this Act on behalf of individuals with
 disabilities; and
- 17 (4) to invoke the sweep of congressional authority, including the power to
 enforce the fourteenth amendment and to regulate commerce, in order to
 address the major areas of discrimination faced day-to-day by people with
 disabilities. (Emphasis added)

19
 20 32. As part of the Americans with Disabilities Act, Public Law 101-336,
 21 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations
 22 and Services Operated by Private Entities" (42 USC 12181ff). The subject
 23 properties and facilities are among the "private entities" which are considered
 24 "public accommodations" for purposes of this title, including, per § 301(7)(C),
 25 any "... motion picture house, theater, concert hall, stadium, or other place of
 26 exhibition or entertainment".

27 33. Pursuant to §302, 42 USC §12182, "No individual shall be
 28 discriminated against on the basis of disability in the full and equal enjoyment of

1 the goods, services, facilities, privileges, advantages, or accommodations of any
 2 place of public accommodation by any person who owns, leases, or leases to, or
 3 operates a place of public accommodation.”

4 34. Among the specific prohibitions against discrimination were
 5 included:

6 §302(b)(2)(A)(ii): “a failure to make reasonable modifications in policies,
 7 practices, or procedures when such modifications are necessary to afford such
 8 goods, services, facilities, privileges, advantages, or accommodations to
 9 individuals with disabilities...;”

10 §302(b)(A)(iii): “a failure to take such steps as may be necessary to ensure that
 11 no individual with a disability is excluded, denied service, segregated, or
 12 otherwise treated differently than other individuals because of the absence of
 13 auxiliary aids and services...;”

14 §302(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication
 15 barriers that are structural in nature, in existing facilities... where such removal is
 16 readily achievable;”

17 §302(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier
 18 under clause (iv) is not readily achievable, a failure to make such goods, services,
 19 facilities, privileges, advantages, or accommodations available through alternative
 20 methods if such methods are readily achievable.” The acts and omissions of
 21 defendants set forth herein were in violation of plaintiffs’ rights under the ADA,
 22 Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part
 23 36ff.

24 35. As an alternative basis for liability, the removal of each of the
 25 barriers complained of by plaintiff as hereinabove alleged, were at all times herein
 26 mentioned “readily achievable” under the standards of the Americans With
 27 Disabilities Act. As noted hereinabove, removal of each and every one of the
 28 architectural barriers complained of herein were also required under California

1 law. Further, on information and belief, construction, alterations, structural
 2 repairs and/or additions during and since the year 1993 have independently
 3 triggered requirements for removal of barriers to access for disabled persons per
 4 §303 of the ADA [42 USC 12183], as well as per California Health and Safety
 5 Code §19959.

6 36. On information and belief, as of the date of plaintiffs' 2006 and 2007
 7 encounters at the subject premises and facilities, and as of the filing of this
 8 Complaint, the premises have denied and continue to deny full and equal access
 9 to plaintiffs and to other disabled persons, including wheelchair users, in other
 10 respects, which violated plaintiff's rights to full and equal access and which
 11 discriminated against plaintiffs on the basis of their disability, thus wrongfully
 12 denying to plaintiffs the full and equal enjoyment of the goods, services, facilities,
 13 privileges, advantages and accommodations, in violation of §302 of the ADA, 42
 14 USC §12182.

15 37. Pursuant to the Americans with Disabilities Act, 42 USC 12188ff,
 16 §308, plaintiff are entitled to the remedies and procedures set forth in §204(a) of
 17 the Civil Rights Act of 1964, 42 USC 2000(a)-3(a), as plaintiffs are being
 18 subjected to discrimination on the basis of disability in violation of this title or
 19 has reasonable grounds for believing that they are about to be subjected to
 20 discrimination in violation of §302 and §303. On information and belief,
 21 defendants have continued to violate the law and deny the rights of plaintiffs and
 22 other disabled persons access to this public accommodation since on or before
 23 plaintiffs' encounters as previously discussed. Pursuant to §308(a)(2), "In cases
 24 of violations of §302(b)(2)(A)(iv) and §303(a)... injunctive relief shall include an
 25 order to alter facilities to make such facilities readily accessible to and usable by
 26 individuals with disabilities to the extent required by this title."

27 38. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the
 28 Civil Rights Act of 1964, (42 USC 2000(a)-3(a), and pursuant to Federal

1 Regulations adopted to implement the Americans with Disabilities Act of 1990.
 2 Plaintiffs are each a qualified disabled person for purposes of §308(a) of the ADA
 3 who is being subjected to discrimination on the basis of disability in violation of
 4 Title III and who has reasonable grounds for believing she will be subjected to
 5 such discrimination each time that she may attempt to use the premises in the
 6 future.

7 Wherefore plaintiffs pray for relief as hereinafter stated.
 8
 9

PRAYER

10 Plaintiffs pray that this Court:

11 1. Issue a preliminary and permanent injunction directing defendants as
 12 current owners, operators, lessors, and/or lessees of the property and premises
 13 hereinabove described to modify the above described property and premises and
 14 related facilities so that each provides full and equal access to all persons,
 15 including persons with physical disabilities; adopt proper policies and procedures
 16 to ensure provision of full and equal access to physically disabled persons; and
 17 issue a preliminary and permanent injunction directing defendants to provide
 18 facilities usable by plaintiffs and similarly situated persons with disabilities, and
 19 facilities and policies which provide full and equal access, as required by law;

20 2. Retain jurisdiction over the defendants until such time as the Court is
 21 satisfied that defendants' unlawful policies, practices, acts and omissions, and
 22 maintenance of inaccessible public facilities as complained of herein no longer
 23 occur, and can not recur;

24 3. Award to plaintiffs all appropriate damages, including but not limited
 25 to statutory damages, general damages and treble damages, in amounts within the
 26 jurisdiction of the Court, all according to proof;

27 4. Award to plaintiffs all reasonable statutory attorney fees, litigation
 28 expenses, and costs of this proceeding as provided by law;

- 1 5. Award prejudgment interest pursuant to Calif. Civil Code § 3291;
2 and,
3 6. Grant such other and further relief as this Court may deem just and
4 proper.

5
6 Dated: October 19, 2007

7 PAUL L. REIN
8 JULIE A. OSTIL
9 ANN WINTERMAN
10 LAW OFFICES OF PAUL L. REIN



11 Attorneys for Plaintiffs
12 JANA OVERBO and
13 NICOLE BROWN-BOOKER

14
15 **DEMAND FOR JURY**

16 Plaintiffs hereby demand a jury for all claims for which a jury is
17 permitted.

18
19 Dated: October 19, 2007

20 PAUL L. REIN
21 JULIE A. OSTIL
22 ANN WINTERMAN
23 LAW OFFICES OF PAUL L. REIN



24 Attorneys for Plaintiffs
25 JANA OVERBO and
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